



UI Appeal Hearing Employer Testimony

Persons on the telephone in the Appeal Hearing:

Williamson — Employer Primary Representative, Alice Williamson

Brown — TWC Hearing Officer

Mitchell — UI Claimant, Debbie Mitchell

Johnson — Employer Representative, Mike Johnson

III. Employer's Portion of the UI Appeal Hearing

Narrator: This is a recording of a typical unemployment insurance benefits hearing. The majority of unemployment hearings involve whether the claimant is qualified for benefits, based on his or her last separation from work.

A hearing has several distinct parts: opening, claimant testimony, employer testimony, and closing. This is the employer portion of the UI Appeal Hearing.

Brown, Hearing Officer: "Okay, I'll go ahead and take all of the employer's testimony instead of going back and forth. I'll finish with all of the employer's testimony and then I'll go back to Ms. Mitchell. Go ahead, Ms. Williamson."

Williamson, Employer Primary Representative: "I was notified that a potential bad stop had been made. I'll let Mike give you the specifics of it when he testifies. Basically, we stopped someone for shoplifting who was not shoplifting. It's our policy that all of that has to be reported to (a) the store manager, and (b), the district loss prevention manager."

"It was reported to me that a bad stop had occurred in our store and that it had not been reported to me and that it had happened a week prior. Mike came in and told me that he would be conducting an investigation based on the instructions of his boss, who was the regional loss prevention manager."

Brown, Hearing Officer: "That could be irrelevant, depending on the nature of the separation. If it's a quit, we need to look at the reasons the claimant quit, but if she was going to be fired, then we would need to look at the reasons that you were going to fire her. So what is your position on that?"

Williamson, Employer Primary Representative: "Company policy is when there is a bad stop, they are to report it. It is to be documented and written in case of follow-up litigation from the person. None of this was done. It is a policy that is covered with them. That is the reason for the investigation. Ms. Mitchell flat denied it. When asked if she had any knowledge of it, she said, 'No!'"

"We then asked the others if this happened. They provided statements, and they admitted it happened. Mike then asked Debbie, 'Are you sure you're still saying this



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didn't happen?' at which time she admitted it. I wasn't involved in any of those conversations. He brought Debbie back to my office to tell me what happened. Prior to me even asking her anything, she asked if she could resign. It was my judgment at that point that she felt that it was so severe that she felt she couldn't work there any longer, and I accepted her resignation."

Brown, Hearing Officer: "When you had the discussion with Ms. Mitchell, did you know that she had admitted to knowing about the situation?"

Williamson, Employer Primary Representative: "Both of her officers wrote statements saying that she knew about the situation."

Brown, Hearing Officer: "OK. My question was, did you know that she had admitted that she knew about it?"

Williamson, Employer Primary Representative: "Mike walked into my office. He told me she had admitted it."

Brown, Hearing Officer: "OK."

Williamson, Employer Primary Representative: "I was on the phone with our HR department, and I was asking, 'What can I do?' The minimum that could have been done at that point was severe disciplinary action, which could have included suspension or termination."

Brown, Hearing Officer: "Now, did they advise you what to do?"

Williamson, Employer Primary Representative: "They did not advise me what to do, because I had not heard from Debbie. In all fairness, the manager needs to hear from the employee."

Brown, Hearing Officer: "Now, was it your decision to make?"

Williamson, Employer Primary Representative: "Yes."

Brown, Hearing Officer: "OK, what about the legal department? Were they also involved?"

Williamson, Employer Primary Representative: "I talked to the HR department."

Brown, Hearing Officer: "Was the legal department involved?"

Williamson, Employer Primary Representative: "I talked to our HR department. I can give you a name."

Brown, Hearing Officer: "Well, are they also lawyers?"

Williamson, Employer Primary Representative: "No."

Brown, Hearing Officer: "So did you all discuss this with the legal department?"



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Williamson, Employer Primary Representative: "No."

Brown, Hearing Officer: "Do you know if Mr. Johnson discussed it with legal?"

Williamson, Employer Primary Representative: "No."

Brown, Hearing Officer: "As far as the conversation that took place between yourself and Ms. Mitchell before she said this, what did you say? Before she said 'Can I resign?'"

Williamson, Employer Primary Representative: "That was it. She sat in the chair. Mike informed me that she had admitted it. First of all I never said to James, 'You're going to be terminated.' James was in the hallway waiting. He just walked out and resigned, and I had just been notified of that, and I said that to Debbie. And that's when she said, 'Am I going to be resigned as well?'"

Brown, Hearing Officer: "Do you know the reason that she first denied and then admitted that she was aware of the bad stop?"

Williamson, Employer Primary Representative: "No."

Brown, Hearing Officer: "What would have been the policy violation?"

Williamson, Employer Primary Representative: "Let me tell you what she said. I asked her why she did it; this is after she had resigned. Her response was, 'I just couldn't come up.' I wrote this down at the time. 'I just couldn't come up here,' meaning to my office, 'and tell you one more time that my guys had screwed up,' and that's a quote."

Brown, Hearing Officer: "Please don't read from documentation that I don't have."

Williamson, Employer Primary Representative: "OK."

Brown, Hearing Officer: "How much time passed between the time that you discussed resignation and the time that she made the statement?"

Williamson, Employer Primary Representative: "One minute; maybe two."

Brown, Hearing Officer: "What type of policy violation would this have been?"

Williamson, Employer Primary Representative: "It is falsifying company documents. She did not process company documents that were due, based on a bad stop."

Brown, Hearing Officer: "Do you have any policy regarding giving false information verbally, such as dishonesty or integrity?"

Williamson, Employer Primary Representative: "Yes."

Brown, Hearing Officer: "What is that policy?"



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Williamson, Employer Primary Representative: "Dishonesty is prohibited."

Brown, Hearing Officer: "Was it the fact that she changed her story that would get her fired, or for the bad stop?"

Williamson, Employer Primary Representative: "It was her failure to report it. The problem is that it was the third time one of the officers involved had done such a thing. He was in jeopardy of being terminated because he had physically stopped someone three times."

Brown, Hearing Officer: "I've read the file. Was that James?"

Williamson, Employer Primary Representative: "Yes. As his boss, she would not have been fired had she then reported it to us."

Brown, Hearing Officer: "Did you ever tell Ms. Mitchell 'If you do not resign you will be fired'?"

Williamson, Employer Primary Representative: "No. The entire conversation in my office lasted less than three minutes before she signed the paper."

Brown, Hearing Officer: "What else was said before she signed the paper?"

Williamson, Employer Primary Representative: "I've told you everything."

Brown, Hearing Officer: "If she had not resigned, what would have happened?"

Williamson, Employer Primary Representative: "Severe disciplinary action, which would mean suspension without pay. It's probable, based on what I know today, that she would have been terminated, because of the position that this put the company in. This could have resulted in a lawsuit from a customer."

Brown, Hearing Officer: "Has the customer taken any legal action?"

Williamson, Employer Primary Representative: "I don't know. On something like that, it can be months before we hear."

Brown, Hearing Officer: "Do you feel that Ms. Mitchell correctly assumed that she would be fired?"

Williamson, Employer Primary Representative: "I don't know what she was thinking."

Brown, Hearing Officer: "You're saying it was probable that she would have been terminated. Would she have been aware of that?"

Williamson, Employer Primary Representative: "I think she probably understood the seriousness of her actions."



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Brown, Hearing Officer: "Had she received a copy of the company Policies and Procedures?"

Williamson, Employer Primary Representative: "Mike Johnson can answer that question."

Brown, Hearing Officer: "Do you know if she was aware that falsification or providing incorrect information could lead to disciplinary action, including termination?"

Williamson, Employer Primary Representative: "Yes. We had bad stops in the past, and she had always reported them both in writing and verbally to me, which indicated to me that she knew it was required under our policies and procedures."

Brown, Hearing Officer: "That doesn't address my question. Did she know that falsification was grounds for termination?"

Williamson, Employer Primary Representative: "Yes. In her experience, she has directly been involved with people who have falsified documents."

Brown, Hearing Officer: "Would she have been suspended without pay immediately?"

Williamson, Employer Primary Representative: "That is the usual policy."

Brown, Hearing Officer: "When did the incident occur?"

Williamson, Employer Primary Representative: "On December 3rd."

Brown, Hearing Officer: "Seven days earlier. When did it come to your attention?"

Williamson, Employer Primary Representative: "December 12th."

Brown, Hearing Officer: "When did she deny knowledge of it, and when did she admit knowledge of it?"

Williamson, Employer Primary Representative: "Everything else happened on December 14th."

Brown, Hearing Officer: "Do you have anything else you'd like to add?"

Williamson, Employer Primary Representative: "No."

Brown, Hearing Officer: "Why were the Policies and Procedures not sent to me before the hearing?"

Williamson, Employer Primary Representative: "I don't know."

Brown, Hearing Officer: "I see something here in the hearing packet that talks about non-productive stops."



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Williamson, Employer Primary Representative: "It's point 2 and point 3: Inform the store manager, and notify the DLPM."

Brown, Hearing Officer: "Were you going to fire her because she denied knowledge of something that she knew about, or were you going to fire her for failing to report the stop to begin with?"

Williamson, Employer Primary Representative: "Failing to report the stop to begin with."

Brown, Hearing Officer: "That's a different issue. This policy would be relevant."

"Ms. Mitchell, in your packet we sent out, there's some numbers in the top left-hand corner of each page. Could you find page 19-A? It says 'Non-Productive Stops' at the top?"

Mitchell, UI Claimant: "I've got it."

Brown, Hearing Officer: "Ms. Williamson, would you like me to enter that document into evidence?"

Williamson, Employer Primary Representative: "Yes, please."

Brown, Hearing Officer: "Ms. Mitchell, do you have any objections to my doing that?"

Mitchell, UI Claimant: "No."

Brown, Hearing Officer: "I will enter 19-A into the record as Commission Exhibit number 1. It is one page. Does this come out of the employer's Policy Handbook, Ms. Williamson?"

Williamson, Employer Primary Representative: "I need Mike to answer that. It comes out of a training they went through."

Brown, Hearing Officer: "It talks about informing the store manager as soon as possible. What is a DLPM? What does that stand for?"

Williamson, Employer Primary Representative: "That was Mike's job, District Loss Prevention Manager."

Brown, Hearing Officer: "It says to notify that person immediately and give a detailed account of the incident. Do you feel those are the most applicable?"

Williamson, Employer Primary Representative: "Yes."

Brown, Hearing Officer: "Toward the bottom it says disciplinary action should always be taken in every incident of this nature."

"Excuse, me, we've run out of tape. Let me go off the record and change sides of the tape before we continue. Just a moment."



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(Clicks)

Brown, Hearing Officer: "Test, test, test. We're back on record in the Mitchell case. This is tape one, side two, in appeal number 999000-1. Was there any topic discussed when I was off the record changing sides of the tape? Ms. Mitchell?"

Mitchell, UI Claimant: "No."

Brown, Hearing Officer: "Ms. Williamson?"

Williamson, Employer Primary Representative: "No."

Brown, Hearing Officer: "I was going to ask you, this document does not indicate what would happen to someone in Ms. Mitchell's position if she failed to make such a report or notify the DLPM. Is there any type of policy to address that?"

Williamson, Employer Primary Representative: "I think it would be covered in the overall associate handbook that she would have reviewed when she was hired 12 years ago."

Brown, Hearing Officer: "Do you have anything else you'd like to add?"

Williamson, Employer Primary Representative: "No."

Brown, Hearing Officer: "Ms. Mitchell, before I let you give your testimony, do you have any questions you wanted to ask Ms. Williamson?"

Mitchell, UI Claimant: "Not at this moment."

Brown, Hearing Officer: "I have some questions for you, Mr. Johnson. Did Ms. Mitchell quit, or was she fired?"

Johnson, Employer Representative: "She resigned."

Brown, Hearing Officer: "What leads you to that conclusion?"

Johnson, Employer Representative: "She asked if she was going to be allowed to resign."

Brown, Hearing Officer: "Were you present?"

Johnson, Employer Representative: "That is correct."

Brown, Hearing Officer: "Why was she asking that?"

Johnson, Employer Representative: "Well, I don't know. Maybe she just felt that she had a serious situation going on, and before she wanted to go any deeper in it, she opted to resign. That's just my assessment."



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Brown, Hearing Officer: "Was there any discussion about, 'If you don't resign, you'll be fired'?"

Johnson, Employer Representative: "No, I don't recall any discussions of termination from our side."

Brown, Hearing Officer: "Were there two pieces of paper in Ms. Williamson's office, one of them having to do with a termination notice and the other a resignation?"

Johnson, Employer Representative: "I'll be honest with you. There were several papers, and I don't recall specifically what those documents were. I'm used to seeing several on the manager's desk."

Brown, Hearing Officer: "We've had some conflicting testimony about the documentation. Do you have any recollection at all of what the specifics were of the paperwork?"

Johnson, Employer Representative: "Again, there were several papers and all kinds of documents on the desk, and me specifically telling you that it was a resignation or a dismissal... I'd be saying something I really don't recall."

Brown, Hearing Officer: "What discussion took place once you walked into Ms. Williamson's office?"

Johnson, Employer Representative: "Which time?"

Brown, Hearing Officer: "The last time."

Johnson, Employer Representative: "We walked in, and I informed the store manager that Debbie had admitted having knowledge of the incident and that there was a video, which I did have in my possession, of the incident. Once that occurred, Ms. Williamson went on to inform Debbie of the disposition of one of her subordinates who had opted to resign. Shortly after that, Debbie asked if she would also be allowed to resign, and Ms. Williamson accepted that resignation."

Brown, Hearing Officer: "Do you know why she was telling Ms. Mitchell about the other employee's resignation?"

Johnson, Employer Representative: "I think it's a common courtesy to a manager over a department to inform them of any action or anything that their employee has done."

Brown, Hearing Officer: "Do you know if she would have been fired if she hadn't resigned?"

Johnson, Employer Representative: "I do not know that."

Brown, Hearing Officer: "Were you trying to contact the legal department at some point?"



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Johnson, Employer Representative: "I talked to the legal department at no time during this incident. I talked to my Regional Loss Prevention Manager, who was my boss, several times, to keep him advised of the investigation."

Brown, Hearing Officer: "Was there any recommendation made as far as Ms. Mitchell's employment was concerned?"

Johnson, Employer Representative: "Get to the bottom of the investigation, and let's go from there."

Brown, Hearing Officer: "Was your boss in a position to recommend discharge?"

Johnson, Employer Representative: "My boss is in the position, just as I am, to review the documentation and evidence in any investigation. If we can't determine at that point what needs to be done, we'll seek some kind of direction from others, partners in the corporation, that have the position and authority to make the call for us."

Brown, Hearing Officer: "Do you recommend termination in certain cases?"

Johnson, Employer Representative: "We have in the past on other situations, yes."

Brown, Hearing Officer: "What about in this situation?"

Johnson, Employer Representative: "I don't recall ever recommending termination."

Brown, Hearing Officer: "Did you discuss that with Ms. Mitchell?"

Johnson, Employer Representative: "No."

Brown, Hearing Officer: "Did you ever tell her that she would be fired if she didn't quit?"

Johnson – Employer Representative: "No. The only discussion of termination happened when she asked me 'Am I going to get canned?' That's her words. I told her that I did not know the answer to that, and she looked at me and said, 'Come on Mike, this is something we've done for a long time. I know that's what you're supposed to say.'"

"My response to that was, 'Debbie, all I can tell you at this point is that the infractions here are of a serious nature, and I can guarantee you that some type of disciplinary action will take place, but to what extent, I don't know.'"

Brown, Hearing Officer: "Was the problem that she changed her story or the fact that she did not report the bad stop?"



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Johnson, Employer Representative: “The primary concern at that point was that she did not follow proper protocol in reporting the stop as our non-productive stop procedures require.”

Brown, Hearing Officer: “If she had admitted it at the beginning, even though she had not made the report, would that have made any difference?”

Johnson, Employer Representative: “We would have to conclude the investigation, and then, if we can’t make a decision, we would involve some other partners and make a determination based on all the facts and evidence that we do have. So I can’t tell you what would have happened if she would have said this, or said that. I can’t predict that.”

Brown, Hearing Officer: “I’m still not clear whether the problem was her initial failure to report the incident, or the fact that she was not honest about it later on.”

Johnson, Employer Representative: “In the position of Loss Prevention, honesty and integrity are very crucial with the company. I can tell you my primary concern was the fact it was not reported, but the fact she claimed no knowledge of it, honestly, in my opinion, probably doesn’t help. It’s an integrity issue.”

Brown, Hearing Officer: “Do you feel that Ms. Mitchell had any option other than resigning.”

Johnson, Employer Representative: “I feel that she had the opportunity to sit down with the store manager, talk about what had happened, and explain why it wasn’t brought up in the beginning. Again, we never got to that point because shortly after being in the office, she asked if she would be allowed to resign.”

Brown, Hearing Officer: “Anything else, sir?”

Johnson, Employer Representative: “No, I believe that’s it for me.”

Brown, Hearing Officer: “Ms. Williamson, do you have any additional questions for Mr. Johnson?”

Williamson, Employer Primary Representative: “No.”

Brown, Hearing Officer: “Ms. Mitchell, do you have any questions for Mr. Johnson?”

Mitchell, UI Claimant: “No.”

Brown, Hearing Officer: “OK, Ms. Williamson, does the employer have anything else before I turn to Ms. Mitchell?”

Williamson, Employer Primary Representative: “No.”

(Note: This ends the employer’s portion of the hearing.)

Narrator: This concludes the employer portion of the UI Appeal Hearing.